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Senate

INTERNET TAX NONDISCRIMINATION ACT

Mr. CARPER. Madam President, I was watching the debate earlier that dealt with the Internet tax, and I felt it important to explain clearly where Senators ALEXANDER, VOINOVICH, ENZI, Senator Dorgan, and I are on this issue.

Before I do that, I am compelled to comment on a bit of what Senator Dorgan has said. I missed most of my colleague ZELL MILLER's comments, but I heard all of what Senator Dorgan said. I am one of those guys who are probably like him, who see this glass as almost full; but even if it were almost empty, I tend to see it as half full.

We were here about a week or so ago debating what to do with respect to the situation we face in this country with asbestos. We all heard the stories that there are people who are sick and dying from asbestos exposure and not getting the help they need. There are folks who may have been exposed to asbestos, and they are taking away money from the folks who ought to be getting it, who are sick and dying.

In the meantime, in the settlements that are taking place, in relation to the transaction costs, the legal fees, maybe half the settlements go for legal fees. That is a situation we face. It is not a good situation.

We all know we ought to do something about it. The tough thing is trying to figure out what.

We have the insurance industry in one corner, the manufacturers and the defendants in another corner, the trial bar in another corner, and organized labor, which is a proxy for victims, in yet another corner.

Last week, we voted not to proceed to the bill that Senator Frist had introduced. Some of us thought it was premature, given the negotiations that have been underway for the last couple months, trying to narrow our differences on asbestos litigation reform. As a result, I think 47 of us voted not to proceed to the bill. We did not proceed to the bill.

But a very good thing has happened subsequent to that. The very good thing is, the negotiations, the mediation led by a retired Federal judge from Pennsylvania, a fellow named Becker, who had been the chief judge of the Third Circuit for a number of years, now retired, in his seventies, a fellow whose health is apparently not good. I probably should not say this. He takes chemotherapy, so I think his health is not good. But he is in his seventies and an age where he is retired and he does not have to work. But he has been drawn, by Senator Specter, into trying to mediate the differences between organized labor and the

trial bar and the insurance companies and the defendant companies to see if we cannot come up with a better way to make sure people who are sick and dying from asbestos exposure get the help they need, and to make sure people who are not sick but have been exposed—but they get sick—that we help them, too; and for folks who are not sick, who have exposure, to make sure they get their medical costs paid and try to reduce outlays from the settlements that occur so the money goes to the people who need the help, not necessarily to their attorneys.

Judge Becker is here today in Washington. He lives in Pennsylvania, but he is here today. He was here yesterday. He was here the day before. He is leading a mediation that has been anointed, embraced by our leaders—Bill Frist on the Republican side, the majority leader, and Tom Daschle on our side, the Democratic leader.

As I speak right now, Judge Becker is holding forth, meeting, listening, asking questions, probing, trying to move the disparate forces to a consensus. I joined him for a little while over in the Hart Building earlier today and said to Judge Becker: My job, I get paid to try to build a consensus on difficult issues. That is part of what we do in the Senate.

That is not Judge Becker's job. He is retired. He ought to be somewhere taking life easier, and yet he is here. He paid his way down on the train today. He did the same thing yesterday. He pays for his own meals, his own lodging. He does it out of the goodness of his heart because he thinks it needs to be done.

I raise that just to say that every day, in some corner of this Capitol, somebody is trying to make this place work. In this case, it is Judge Becker. There are other people of

good will who are in that room with him trying to get through a tough patch and to help us find a way to a more rational, logical, fair way to help people who have been exposed to asbestos.

We voted last week not to go to the bill. I know some people were not happy with that vote, but we simply believed it was not time to go to the bill, given this mediation process. We urged our leaders to embrace that process, and they have done that. I am encouraged—out of that embracing of that mediation process, and the infusion of leadership authority to it—that something good will come of these negotiations.

Mr. President, we will have an opportunity to vote tomorrow on proceeding to the McCain amendment. Senator McCain has sought to find a compromise on the Internet tax legislation.

Let me back up for a moment and talk about it, if I can. When Senator Voinovich and I were Governors of our respective States, we worked with the Congress—House and Senate Democrats and Republicans—and encouraged then-President Clinton to sign legislation that said the Federal Government ought not tell the States to spend money on something and not provide that money. The Federal Government should not undercut the revenue base of State and local governments without making up the difference.

In 1998, the Congress passed a little bitty unfunded mandate that said States could not tax access to the Internet. If you were already doing it, you could continue to derive your tax, if you are a State or local government, and tax access to the Internet. But the States could not have multiple taxes; they could not have discriminatory taxes on the Internet. That was the legislation passed

in 1998 and extended in 2001, and that moratorium lapsed last fall, as we know.

Since that time, States have not jumped in to pass new taxes on access to the Internet. They have not passed discriminatory taxes or multiple taxes with respect to the Internet. They have been sort of sitting back biding their time, waiting to see what we would do.

I think there are four areas of contention that exist with respect to the proposal that Senator McCain has offered. One is the definition of what is tax exempt under any moratorium we negotiate. On our side, Senators ALEXANDER, VOINOVICH, ENZI, myself, and others believe the existing moratorium actually nails it pretty well, and the idea that folks should not have to pay a tax on accessing the Internet on their AOL bills, if you will. Whether they access their e-mail, their Internet by cable, by DSL, or by wireless, we think folks should not have to pay that kind of tax.

We do not believe folks should have to pay multiple taxes by different levels of government on the Internet. We believe there should not be discriminatory taxes on purchases, for example, that are made over the Internet.

But we have a clear difference of opinion with respect to defining what is to be tax exempt—free from taxation—by State and local governments. Our friends on the other side are interested in doing a whole lot more than stopping access fees that we pay as consumers. We don't want anybody to pay those either.

They want to go well beyond the moratorium against multiple fees on use of the Internet. They want to go beyond discriminatory taxes. What they want to do, really, is take away from States and local

governments the ability, if States want to, to impose business-to-business transaction taxes that might involve the Internet. I am not interested in taxing those as a Federal legislator, but I don't know that it is our part, as Federal legislators, to say to State and local governments that they can't do that unless we are willing to make up the revenue shortfall that may come as a result.

So the four areas of difference: One is the definition of what is tax exempt under the moratorium we adopt. A second area of difference that we have is with respect to the duration of the moratorium that we might extend. I said earlier, the first moratorium we passed was 3 years in duration from 1998 to 2001. At that time, Congress passed, almost unanimously, a further 2-year extension of that moratorium that lasted until last fall. Now that moratorium has lapsed.

I think we have seen suggestions in S. 150, introduced by Senator Allen and Senator Wyden, that they wanted to make the moratorium permanent, an extension of the moratorium not 2 years, not 3 years, but to make it permanent. They define very broadly what is to be exempt from taxation under that permanent moratorium, even if it cuts into the revenue bases of State and local governments, and even if we do not make up the shortfall they may then face. So the second area of contention is the duration of the moratorium.

The third area of contention deals with whether we should grandfather in the rights of State and local governments, so if they have already put in place some kind of tax on the Internet, our previous moratoriums grandfathered them in, protected them, for a period of time, from losing those revenues. It held them harmless, if you will. And the question is, if we go forward and we have a

grandfather clause to protect the States that already have imposed some kind of tax measure, how long do we extend that grandfather clause for those State and local governments that are going to be deprived of revenues they currently collect, and that we are not prepared to make up?

The suggestion has come forward, in Senator McCain's proposal earlier this week—maybe yesterday—that there should be a grandfather clause to hold the States harmless for a while but not for as long as the duration of the moratorium. And that is problematic.

The fourth area of contention deals with the application of the moratorium to what I would describe as traditional taxable voice communications, taxable by State and local governments, but the application of the moratorium to those traditional taxable voice communications when those communications are routed over the Internet. It is called VOIP.

Is it possible to bridge our differences on those four areas? It may or may not be. But having clearly defined them, our side is certainly willing to discuss them with those who have a different view of these issues than we do. One thing we all agree on is, whatever we do, we should try to hold the States harmless.

Somewhere in my talking points today, I have a discussion of why it is important that we hold the States harmless. If I can just take a minute or 2, I want to share part of this.

Our States are clearly facing extremely difficult times. We all know that. States have cut services and raised taxes over the last 3 years as they have scrambled to fill a budget shortfall that approaches \$250

billion. Many States still face significant revenue shortfalls. California alone must fill an estimated \$16 billion shortfall. New York faces a \$4 billion shortfall. Both Michigan and Florida still have projected deficits of \$1 billion. Some States are being forced to make cuts that are not only painful and unpopular but which ultimately undermine our efforts as part of welfare reform to make work pay. Some 34 States have adopted cuts that are causing anywhere from 1.2 million to 1.6 million low-income people to lose their health insurance. Alabama, Colorado, Maryland, Montana, and Utah have all stopped enrolling children in their children's health insurance programs. Florida has done the same and has built up a waiting list of more than 10,000 children.

Meanwhile, Connecticut is cutting coverage for more than 20,000 parents, and Georgia is cutting coverage for 20,000 pregnant women and children. In Texas, the State is actually ending coverage entirely for nearly 160,000 children and working families.

Besides health care, childcare is also on the chopping block. Some 23 States have cut back on childcare for working families. Florida, for example, has more than 48,000 children on a waiting list for childcare. Under the State's formula they are actually eligible, but they are not able to get it given the State's fiscal challenges. Reducing the waiting list is not even an option. I am told the budget in Florida is moving through the statehouse and they have cut childcare even more, by another \$40 million.

Tennessee faces similar cuts. Tennessee has begun declining applications for childcare from all families who are not actually receiving welfare payments.

Altogether, in about half of all States, low-income families who are eligible for or in need of childcare assistance are either not allowed to apply or are placed on waiting lists. In California alone, over a quarter of a million kids, 280,000 children, are on waiting lists in that one State.

I won't go on. The point I am trying to make is just a reminder. States face terribly difficult choices these days, whether it is health care, childcare, size of the classrooms, or the ability to hire teachers and to pay them what they need to attract good math and science teachers. States are in a bind. I was Governor in the good years, from 1993 to 2001, when we were rolling in money. The States are not rolling in money anymore.

The father of the Presiding Officer is Governor. He will tell us they are not rolling in money up in Alaska any more than they are in California.

If States were rolling in money, Senator Alexander and myself, Senators VOINOVICH, ENZI, HUTCHISON, and others would not be making this big fuss over what we believe is an unfunded mandate for State and local governments that is represented by S. 150 and, we believe, by the alternative offered by Senator McCain. If the States were rolling in money, we wouldn't be doing this. If we were providing some kind of offset to the revenues that State and local governments would lose, we wouldn't be making a big fight about it either. If States could be held harmless, we could probably work our way through this. Maybe we ought to. I believe we should.

One thing I know for sure, there is agreement to extend the moratorium. I think if we were to vote on a simple 2-year

extension of the moratorium that expired last November, there would probably be votes to pass that.

I am concerned about the vote on cloture tomorrow on the McCain proposal. I urge my colleagues not to vote for it. Last week I urged my colleagues not to vote to proceed to the bill on asbestos that Senator Frist had introduced, not because I was not interested in getting a conclusion or consensus. I believed that by not bringing the bill to the floor, it actually increased the likelihood that we are going to get consensus on asbestos litigation reform. We are moving in that direction, and I am encouraged that we are on the right track.

I believe if we go to the McCain bill tomorrow, we would be acting prematurely. There are still negotiations that can take place and should take place around the four elements I discussed. If we are forced to take up the bill at that point in time, we foreclose what could come out of those discussions, some of which have borne fruit already, some which still could.

There are a number of Senators on my side who want to offer amendments of their own. It is ironic. We have on the one hand people on the other side of this issue—from Senators ALEXANDER, VOINOVICH, ENZI, and myself—who contend that they want to support the telecom industry. I believe in their hearts they want to promote the industry. It is a good industry with good people. But there are also folks on our side and on the Republican side who have a whole bunch of ideas they would like to present and to offer as amendments. I will mention a few that might be appropriate.

If we want to help the industry build a market broadband network, there are any number of viable options. Senator Hollings

has introduced legislation, with a number of cosponsors, that would provide block grants to support State and local broadband initiatives.

Senator Dorgan, the floor manager on our side, has legislation to make low-interest loans available to countries who would deploy broadband technology in rural areas. Senator Rockefeller has introduced legislation, with 65 cosponsors, to provide tax credits for companies investing in broadband equipment. Senator Burns of Montana has legislation that would allow the expensing of broadband equipment. Senator Boxer has legislation that allocates the additional spectrum for unlicensed use by wireless broadband devices. Senator Clinton and others have legislation.

To the extent that we vote for cloture tomorrow on the McCain proposal, many, if not all, of these proposals will not be made in order, even though they are germane and they relate to the issue. These amendments and, frankly, a lot of others like them could not be offered.

I am not suggesting that all of them should be offered, but some of them should. Members who have a strong interest and have worked on the issues for a long time deserve that right. They believe strongly.

As my colleagues think about tomorrow's cloture votes, I realize this bill has gotten off track. What somehow started off as an Internet tax bill and figuring out how we can extend the moratorium and then paying a user fee for access to the Internet got off on another side rail on energy policy, ethanol, and a number of other things. I think Senator Domenici has introduced as an amendment the entire Energy bill. Eventually, I hope we will work our way through that. In the meantime, I hope we will use the hours

ahead and maybe the next couple of days to join in a negotiation with our colleagues on the other side of this issue and try, maybe one last time, to see if there is someplace in between where we are and where they are.

In the end, if there is a push for the approach Senator Alexander and I introduced, which is the straight-ahead, 2-year extension of the moratorium, to make sure it is not biased against DSL, we can just have that vote. We are not there yet. We have about 24 hours to consider it, and maybe cooler heads will prevail. If it comes to it, I will vote against cloture, not because I am not interested in finding a solution—I think we can. The time just may not be right. It could be close.

With that, I yield the floor.